

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
TIDEWATER UTILITIES, INC. FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE WATER SERVICES) PSC DOCKET NO. 16-0165
PURSUANT TO 26 *DEL. C.* §203C ("PUMP)
STATION #210"))
(SUBMITTED FEBRUARY 5, 2016;)
FILED APRIL 26, 2016))

ORDER NO. 8885

AND NOW, this 3rd day of May, 2016, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, on February 5, 2016, Tidewater Utilities, Inc. ("Tidewater") submitted an application to the Commission pursuant to 26 *Del. C.* §203C(e)(1)b.2¹ seeking a Certificate of Public Convenience and Necessity ("CPCN") to expand its facilities and operations to provide water services to one parcel of land in Sussex County, Delaware.² This parcel of land is more specifically identified by the Sussex County Tax Map Parcel Number 334-6.00-39.02 and was referred to as "Pump Station #210" (the "Proposed Service Area"); and

¹ 26 *Del. C.* §203C(e)(1)b.2 provides, in pertinent part, that the Commission shall issue a CPCN if the applicant has submitted, together with the application, evidence that all landowners of the proposed territory have been notified by certified mail, or its equivalent, of the filing of the application and one or more petitions requesting water service from the applicant executed by the landowners of record of each parcel or property to be encompassed within the proposed territory to be served.

² As explained in more detail below, because the parcel of land is owned by Sussex County, Delaware, the basis of the application should have been a certified copy of a resolution from the governing body of Sussex County, Delaware. See 26 *Del. C.* §203C(e)(1)b.4.

WHEREAS, the Commission Staff ("Staff") reviewed the submitted application to ensure compliance with the statutory provisions of 26 *Del. C.* §203C and the Commission's Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities as set forth in 26 *Del. C.* §2002 (the "Regulations"); and

WHEREAS, the submitted application included evidence that Tidewater had mailed notice of such application to the only landowner of record in the Proposed Service Territory (which is Sussex County), the options available to such landowner of record, and proof that Tidewater had published notices in two newspapers of general circulation regarding its submitted application; and

WHEREAS, the submitted application also included a petition signed by a Sussex County engineer and evidence that the parcel of land included in the Proposed Service Area is owned by Sussex County, Delaware;³ and

WHEREAS, the submitted application failed to include a plan of service description that included an estimated timetable for providing service or an explanation as to why such an estimated timetable could not be provided as required by 26 *Del. Admin. C.* §2002-3.13; and

WHEREAS, because the parcel of land in the Proposed Service Area is owned by Sussex County, Staff notified Tidewater that the

³ Staff notes this petition was not signed by the owner of the parcel of land and therefore the petition was insufficient to support a CPCN under 26 *Del. C.* §203C(e)(1)b.2 (which allows for CPCN applications based on signed petitions from landowners of record).

submitted application failed to include the statutorily-required supporting evidence but noted that the application could be supported by a certified resolution from Sussex County's governing body as provided in 26 *Del. C.* §203C(e)(1)b.4;⁴ and

WHEREAS, Tidewater later filed a certified copy of a resolution from Sussex County's governing body that authorized Tidewater to provide water services to the Proposed Service Area; and

WHEREAS, Tidewater also later revised its application (the "Filed Application") to request that its CPCN be based on the provisions of 26 *Del. C.* §203C(e)(1)b.4 (i.e., a certified resolution authorizing Tidewater to provide water services to the Proposed Service Area). The revised application also included a new plan of service that complied with the requirements of 26 *Del. Admin. C.* §2002-3.13; and

WHEREAS, Staff has reviewed the Filed Application and has found that it is in compliance with the provisions of 26 *Del. C.* §203C(e)(1)b.4 and the Commission's Regulations except for (i) the timing of the published newspaper notification as required by

⁴ 26 *Del. C.* §203C(e)(1)b.4 provides, in pertinent part, that the Commission shall issue a CPCN if the applicant submits (together with the application), evidence that all landowners of the proposed territory have been notified by certified mail, or its equivalent, of the filing of the application, and such evidence consists of copies of all materials returned to the sender and a certified copy of a resolution or ordinance from the governing body of a county or municipality that requests, directs, or authorizes the applicant to provide water utility services to the proposed territory to be served, which must be located within the boundary of such county or municipality.

26 *Del. Admin. C.* §2002-10.7⁵ and (ii) the timing of the notice of the filed application that Tidewater sent to the landowner of record as required by 26 *Del. Admin. C.* §2002-9.2;⁶ and

WHEREAS, Staff notes that it has received no comments regarding Tidewater or the Filed Application in response to the notices which Tidewater published in two newspapers of general circulation; and

WHEREAS, the Filed Application also included a request for a waiver of the timing requirements as set forth in 26 *Del. Admin. C.* §§2002-9.2⁷ and 10.7. As "good cause" for the waiver, Tidewater stated that (i) granting the waiver will be in the public interest because the timing requirements are administrative rather than statutorily required, (ii) Tidewater has already provided all of the necessary information about the parcel in the submitted application, (iii) granting the waiver should not be unduly disruptive for customers, (iv) the waiver provides for an administratively efficient use of resources, and (v) an extension of water services to the Proposed Service Area will not harm or degrade Tidewater's ability to provide safe, reliable water services for present customers; and

⁵ Under 26 *Del. Admin. C.* §2002-10.7, the applicant must publish in two newspapers of general circulation a form of public notice of its application within 10 days of the filing of the application.

⁶ Under 26 *Del. Admin. C.* §2002-9.2, the form of notice required by the regulations must be sent to each landowner of record not more than thirty-five days and not less than thirty days prior to the filing of the application.

⁷ Although the Filed Application cited to 26 *Del. Admin. C.* §2002-9.1, Staff believes this was an inadvertent error and that Tidewater meant to cite to 26 *Del. Admin. C.* §2002-9.2 which sets forth the timing requirement for sending to the landowner the notice of the filed application.

WHEREAS, 26 *Del. Admin. C.* §2002-1.4⁸ allows the Commission to extend any timing requirement as long as it is not required by a statutory provision; and

WHEREAS, Staff has submitted a memorandum to the Commission which confirms that the Filed Application now meets the requirements for granting Tidewater a CPCN pursuant to 26 *Del. C.* §203C and the Regulations except for the timing requirements set forth in 26 *Del. Admin. C.* §2002-9.2 and 10.7. Staff supports the granting of a waiver of the regulatory timing requirements in this particular instance for the reasons set forth in its memorandum to the Commission. Accordingly, Staff recommends that the Commission grant Tidewater a CPCN based on the Filed Application and also grant Tidewater a waiver of both 26 *Del. Admin. C.* §§2002-9.2 and 10.7;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. Pursuant to 26 *Del. C.* §203C(e), the Commission grants a CPCN to Tidewater to provide water services to the Proposed Service Area.

2. Based on the provisions of 26 *Del. Admin. C.* §2002-1.4, the Commission also extends the deadline for sending notice to the landowner of record as required by 26 *Del. Admin. C.* §2002-9.2 and extends the deadline for publishing notice in two newspapers of general circulation regarding the Filed Application. In this instance, Tidewater did, in fact, send the

⁸ Under 26 *Del. Admin. C.* §2002-1.4, the Commission may modify or extend any of the timing requirements set forth in these regulations so long as such timing requirement is not required by statutory provision.

required notice to Sussex County and also published notice regarding the application, but such notices were untimely. Because the timing of these notices is not a statutory requirement, we will accept Tidewater's proof of the notices given and grant the CPCN based on the evidence provided in the Filed Application.⁹

3. Tidewater shall comply with any and all federal, state, county, and local statutes, ordinances, orders, regulations, rules, and permit conditions that are applicable, or may become applicable, to any matter involving water utility services provided to the service territory granted by this CPCN.

4. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chair

Commissioner

Commissioner

⁹ We note that a waiver could also be granted to Tidewater based on the provisions of 26 Del. Admin. C. §2002-1.5 which would allow us to excuse, for good cause, any failure to comply with the Regulations so long as such requirement is not statutorily mandated and is not material to the Commission's decision.

Commissioner

Commissioner

ATTEST:

Secretary